

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 408 of 1997

in

SPECIAL CIVIL APPLICATION No 54 of 1997

with

LETTERS PATENT APPEAL No 409 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 and 2 - Yes 3 to 5 - No

STATE OF GUJARAT

Versus

SENDHAJI S THAKOR

Appearance:

1. LETTERS PATENT APPEAL No. 408 of 1997
MR DA BAMBHANIA for Appellants
MR PH PATHAK for Respondent No. 2

2. LETTERS PATENT APPEAL No 409 of 1997
MR DA BAMBHANIA for Appellants
MR BIPIN I MEHTA for Respondent No. 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 453 of 1997

in

SPECIAL CIVIL APPLICATION No 8590 of 1996

STATE OF GUJARAT

Versus

JAHIDBHAI H SERESIA

Appearance:

MR DA BAMBHANIA for Appellants

MR RC PATHAK for Respondent No. 1, 2

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 494 of 1997

in

SPECIAL CIVIL APPLICATION No 8589 of 1996

STATE OF GUJARAT

Versus

BODUBHAI BALUBHAI

Appearance:

MR DA BAMBHANIA for Appellants

MR RC PATHAK for Respondent No. 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 536 of 1997

IN

SPECIAL CIVIL APPLICATION NO. 4575 OF 1995

STATE OF GUJARAT

Versus

HEMUBHAI VELABHAI

Appearance:

MR DA BAMBHANIA for Appellants

MRS SANGEETA N PAHWA for Respondent No. 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 537 of 1997

in

SPECIAL CIVIL APPLICATION No 4567 of 1995

STATE OF GUJARAT

Versus

GORDHANBHAI MAGANBHAI

Appearance:

MR DA BAMBHANIA for Appellants

MRS SANGEETA N PAHWA for Respondent No. 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 538 of 1997

in

SPECIAL CIVIL APPLICATION No 4577 of 1995

STATE OF GUJARAT

Versus

MANUBHAI MAVJIBHAI

Appearance:

MR DA BAMBHANIA for Appellants

MRS SANGEETA N PAHWA for Respondent No. 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 539 of 1997

in

SPECIAL CIVIL APPLICATION No 4578 of 1995

STATE OF GUJARAT

Versus

LABHUBHAI MOHANBHAI

Appearance:

MR DA BAMBHANIA for Appellant

MRS SANGEETA N PAHWA for Respondent No. 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 540 of 1997

in

SPECIAL CIVIL APPLICATION No 4565 of 1995

STATE OF GUJARAT

Versus

KANJIBHAI MAVJIBHAI

Appearance:

MR DA BAMBHANIA for Appellants

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 541 of 1997

in

SPECIAL CIVIL APPLICATION No 4580 of 1995

STATE OF GUJARAT

Versus

VALJIBHAI MAGANBHAI

Appearance:

MR DA BAMBHANIA for Appellants

MRS SANGEETA N PAHWA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: /12/98

CAV JUDGEMENT (PER C.K.THAKKER J.)

1. All these Letters Patent Appeals arise out of similar judgments and orders passed in several Special Civil Applications. They were placed for admission but in view of several contentions and lengthy arguments both the sides requested the court to treat the hearing as final hearing of the matters. We accordingly asked them to make submissions for final disposal of the appeals. We also granted sufficient time to the parties for completion of record by permitting filing of affidavit-in-reply as well as affidavit-in-rejoinder. The record was made complete and arguments were heard for final disposal.

2. For the purpose of appreciating controversy raised in the appeals, relevant facts in Letters Patent Appeal No. 540 of 1997 arising from Special Civil Application No. 4565 of 1995 may briefly be stated;

3. That petition was filed by the State of Gujarat for quashing and setting aside an award passed by the Presiding Officer of Labour Court, Surendranagar in Recovery Application No.657 of 1992 decided on 4th April 1994. The said application was filed by Manubhai Mavjibhai and others under Section 33C (2) of the Industrial Disputes Act, 1947. It was the case of the workmen that they were serving in Forest Department under the Deputy Conservator of Forest, Surendranagar; that they were entitled to certain payment in accordance with the resolution issued by the Roads & Buildings department of the State on October 17, 1988. According to them, since they were not paid their legal dues by the opponents, they were constrained to approach the Tribunal

for getting the benefits from January 1, 1988 to December 31, 1992. They had produced a copy of the resolution as also the amount to which they were entitled.

4. A written statement was filed on behalf of the opponents in which it was denied that the applicants were serving with the opponents since 10 to 15 years. It was stated that the applicants were appointed as daily wagers by the Forest Department and they were called to do work as and when the work was available. It was further stated that they were not appointed for construction or maintenance of work and hence the provisions of the Resolution dt. October 17, 1988 issued by R & B Department did not apply. The applicants were, therefore, entitled only to minimum wages as prescribed by the Forest Department vide its letter dt. May 31, 1993. The application under Sec.33 C(2) was, therefore, liable to be dismissed. Other applications of similar nature were also filed by the applicants and contested by the opponents.

5. The Tribunal, by an award dt. April 4, 1994, allowed the applications filed by the applicants and directed the opponents to grant benefits as per prayer made by them in the applications. The applications were allowed with costs.

6. The said decision was challenged by the State on various grounds. It was contended on behalf of the State that the resolution on which reliance was placed by the applicants before the Labour Court was not issued by the Forest Department but was passed by the Roads & Buildings Department and the provisions thereof did not apply to the applicants who were working in the Forest Department. It was also contended that the minimum wages were prescribed for daily wagers working in the Forest Department and the applicants could claim only the said benefit from the opponents. It was also contended that the appointments were made from time to time on a forestry project sponsored by the World Bank. The project was for a particular duration and the assignment was of a casual nature. It was neither continuous nor regular and the employees engaged in such project were not entitled to regular pay scales. It was also the case of the State that the petitioners could not have approached the Tribunal by filing application under Sec.33 C(2) of the Act inasmuch as the benefits claimed by the applicants were neither adjudicated nor crystallised by virtue of an award passed or order made after proper adjudication and decision on merits. The applicants' claim was on the basis of the resolution dt.

October 17, 1988 which was disputed by the authority. It was also alleged that only opponent no.2 was served who had filed his statement of defence on his behalf.

7. The proceedings were then fixed for argument on April 21, 1994, as per the endorsement dt. January 13, 1994 which was clear from Rojkam. It, however, appears from the Rojkam that application was moved for advancing the date of hearing on March 24, 1994 and in pursuance of a request by the applicants the matter was taken on Board. It was stated that the parties were not inclined to argue the case further and the case was adjourned for orders. Ultimately, the order was passed allowing the applications.

8. It was the case of the State Government in the petition that the Presiding Officer of the Labour Court transgressed his jurisdiction as if he was exercising jurisdiction under Sec.10 of the Act and in violation of statutory provisions as also various decisions of the Supreme Court, and award was passed which was null and void. A prayer was, therefore, made in the petition to set aside the award passed in Recovery Application.

9. The petition came up for hearing before a learned Single Judge and the learned Single Judge after hearing the parties, dismissed the petition. Operative part of the order in para 8 reads as under:

"The upshot of the aforesaid discussion is thus:

- (i) The Special Civil Application No.4577 of 1995 filed against Manubhai Mavjibhai fails and the same is hereby dismissed and the Rule is hereby discharged with no order as to costs.
- (ii) The other five petitions i.e. Special Civil Applications Nos. 4565, 4567, 4575, 4578 and 4580 of 1995 are partly allowed to the extent that the impugned order dated 4.4.94 in the cases of Kanjibhai Mavjibhai, Gordhanbhai Maganbhai, Hemubhai Velabhai, Labhubhai Mohanbhai and Valjibhai Maganbhai shall stand modified to the extent of reducing the amount by 50% with reference to the benefits to be computed on the basis of the Government Resoution dated 17.10.88 for the period from 1.10.88 (the date from which the Resolution dated 17.10.88 was made effective) to 23.11.90. Rule is made absolute in these five petitions in the terms as aforesaid with no order as to costs."

10. Against the said order Letters Patent Appeal No. 540 of 1997 is filed. Other appeals also are preferred by the State of Gujarat and Deputy Conservator of Forests.

11. L.P.A.No.408/97 and other appeals are filed by the State authorities against the judgment and order passed by the learned Single Judge on March 11, 1997 and other similar orders passed by the learned Single Judge. Those petitions were filed by the petitioners workmen directly in this court by invoking Art.226 of the Constitution of India for an appropriate writ, direction, or order for a declaration that the action of the respondent authorities in not extending the benefit of Government Resolution dt. October 17, 1988, was unlawful, discriminatory, arbitrary, and violative of Arts.14,16,19 and 21 of the Constitution of India and by directing the authorities to extend the benefits of the said resolution to all the daily wagers appointed by the authorities and to grant all consequential benefits with interest.

12. When the petitions came up for hearing, the learned Single Judge observed that the question raised in the petitions was covered by a decision in Spl.C.A.No.4565 of 1995 and companion matters in which the provisions of the Government Resolution dt. October 17, 1988 came to be interpreted. The petitions were, therefore, disposed of. It was observed in the order as under:

"Mr.Bambhania, learned AGP states that no Letters Patent Appeal was preferred against this judgment dt. 4.3.1996 and the judgment has become final."

13. The Court also recorded the statement of Mr.Pathak, learned counsel for the petitioners that the order passed in those matters was implemented and the benefits were given to the workmen. The Court, therefore, following earlier decision, directed the authorities to extend the benefits of the Government resolution dt. October 17, 1988 to the workmen with effect from January 1, 1988 and to pay them all benefits as per the said resolution. Rule was accordingly made absolute. Those orders have also been challenged in Letters Patent Appeals.

14. Extensive arguments have been advanced by Mr.S.N.Shelat, Additional Advocate General, instructed by Mr.D.A.Bambhania, Additional Government Pleader on behalf of the appellants. It was inter alia, contended;

(1) The orders passed by the Labour Court in purported exercise of the powers under Section 33C(2) of the Act were illegal, erroneous and without jurisdiction as in absence of any order, decision, award or adjudication, no application for recovery under the said provision would lie.

(2) Resolution dt. October 17, 1988 was not issued by the Forest Department but was issued by the Roads & Buildings Department. The provisions of a resolution issued by one Department does not apply to other Departments. The effect of the resolution issued by the Roads & Buildings Department has limited application to the employees working in the said Department.

(3) Under the Gujarat Government Rules of Business, 1984 framed under Art.166 of the Constitution of India, appropriate Department is General Administration Department ("GAD" for short). It is only GAD which issues circulars and resolutions regarding service conditions of employees. As resolution dt. October 17, 1988 was not issued by GAD, the provisions thereof could not be invoked by the applicants and it was an error committed by the Tribunal as well as by the learned Single Judge in extending the benefits of that G.R. to applicants.

(4) Assuming without admitting that the resolution dt. October 17, 1988 would apply to employees working in the Forest Department, the applicants were not entitled to claim benefit of the said resolution. Various clauses of the resolution make it abundantly clear that the scope of the resolution was limited to the employees working in connection with construction and maintenance work. The applicants were neither engaged in construction nor in maintenance work and, hence, they were not entitled to the benefit of the said Resolution.

(5) Even if it is held that the applicants were entitled to the benefits of G.R. dt. October 17, 1988, the learned Single Judge has committed grave error in granting benefits with effect from January 1, 1988. Some petitions were filed in 1996 and some in 1997. The petitioners, who approached this court in 1996/1997, could not have granted benefits from January 1, 1988. Even if the learned Single Judge was of the view that the petitions could not be dismissed on the ground of delay, while granting monetary benefits, the fact that the petitioners approached this court after a long time ought to have been taken into account. By not doing so, an

error of law was committed which requires interference.

(6) Doctrine of "equal pay for equal work" does not apply in vacuum. Before the said doctrine is applied, the Court/Tribunal must consider the nature of work, the project for which such appointments were made, terms and conditions of appointment, status of employees, such as regular, temporary work charge, daily wager, stop-gap, etc. and only on the basis of those facts, take an appropriate decision in accordance with law. None of the above relevant considerations had been kept in mind by the Tribunal or by the learned Single Judge. The orders are, therefore, vulnerable.

15. On behalf of the respondents, we have heard M/s Girish Patel and H.M.Mehta, Senior Advocate for Mr.P.H.Pathak, Mr.J.R.Nanavat, Dr. Mukul Sinha and Mrs. S.N.Pahawa. The learned counsel supported the decision of the learned Single Judge on various grounds.

(1) According to them, Letters Patent Appeals against the decision of the learned Single Judge are not maintainable in view of the statement made on behalf of the State in Special Civil Application No. 8539 of 1996 and companion matters. In the judgment of the learned Single Judge, it was mentioned that Mr.Bambhania stated that no Letters Patent Appeal was preferred against the judgment and order passed in Special Civil Application No. 4565 of 1995 and companion matters and decision had become final.

(2) No new contention can be permitted to be raised in Letters Patent Appeal regarding power of one Department of the Government to issue circular/resolution concerning the other Department. Such contention was never advanced before the learned Single Judge when the petitions were heard.

(3) Issuance of resolutions / circulars is executive function of the Government. Such resolutions and circulars are issued by the order and in the name of the Governor of Gujarat and it does not lie in the mouth of the Government that the application of the provisions of such resolutions / circulars are limited to a particular Department.

(4) Even on interpretation, the Tribunal and the learned Single Judge were right in holding that the provisions of the resolution, dt. October 17, 1988 were applicable to employees of all departments. The decision was taken after inviting not only representatives of the

Roads & Buildings Department but of various other Departments. If the intention of the Government was to extend the benefits of the resolution only to one Department, it was not at all necessary to call representatives of other Departments.

(5) Assuming without admitting that the resolution dt. October 17, 1988 on its face value does not take within its sweep employees of Forest Department, the action of not extending benefits to the employees of that department must be held to be arbitrary, discriminatory, unreasonable and violative of Art.14, 16, 19 and 21 of the Constitution of India. It is not open to the State authority to deny equal benefits to all employees similarly situated.

(6) The orders passed by the learned Single Judge are otherwise just, proper and equitable. In exercise of appellate power, this court may not disturb them in the larger interest of justice.

16. First let us consider a preliminary objection raised on behalf of the respondents. It was contended on their behalf that the point was decided on 4th March, 1996 in Special Civil Application Nos.4565 of 1995 and companion matters. After considering the relevant provisions of the Government Circular dt. October 17, 1988, it was held that the workmen were entitled to all benefits available to other employees similarly situated. So far as Special Civil Application Nos. 8589 of 1996 and companion matters are concerned, the learned Single Judge merely followed a common order passed in Special Civil Application No. 4565 of 1995 and companion matters stating therein that it was stated by the learned AGP that the point was decided by a judgment dt. 4th March, 1996; that no Letters Patent Appeal was filed and the judgment had become final. In view of the above circumstance, Letters Patent Appeals are not maintainable and are liable to be dismissed.

17. We are not impressed by the said argument. It may be stated at the outset that Letters Patent Appeals are also filed against the decision rendered by the learned Single Judge in Special Civil Application No.4565 of 1995 and companion matters decided on 4th March, 1996. It appears that when the State Government realised that there were several such matters and that the judgment would apply to a large number of employees though they were not covered by the Circular and were not entitled to the benefits in accordance with the above circular and several cases were also pending in various Tribunals

and/or in courts , the State filed Letters Patent Appeals. There was delay in filing appeals. We have condoned delay and those appeals are heard alongwith other appeals. It, therefore, cannot be said that the decision in Spl.C.A.No.4565 of 1995 dt. 4th March, 1996 has become final and all other matters must be decided following the said decision and the State cannot prefer appeals against the subsequent judgments.

18. The matter, however, can be looked at from another angle also. Even on principle, non-filing of appeals in some cases will not necessarily debar the authorities in filing appeals subsequently in other cases if the circumstances so warrant. Sometimes it may happen that either due to default or delay or laches, or considering small claim or other such consideration, the authority may not challenge the order passed against it. But subsequently, the authority may realise when similar question is raised or difficulties arise in other cases while implementing the directions in an isolated case that it should challenge legality and validity of the order. It may also happen that by that time, the judgment which might have been rendered earlier would have become final and conclusive and could not be reopened as "judgment in personam". But a superior court may not dismiss subsequent appeals merely on the ground that in an earlier matter, no appeal was preferred by the authority and that the decision had become final. It can decide the matter on its own merits.

19. In State of Maharashtra vs. Digambar, 1995(4) SCC 683, a petition was filed by the petitioner in 1991 complaining against an act of the Government of taking away his land in the year 1971-72. A contention was raised on behalf of the Government that the petition was liable to be dismissed as there was laches and delay of about 20 years. The contention was, however, negatived by the High Court and the compensation was awarded. Subsequently the said judgment was followed by the High Court in several other writ petitions. The State approached the Supreme Court. It was contended on behalf of the claimants that when the State did not prefer the appeals to the Supreme Court against some of the earlier judgments rendered in similar matters filed before the High Court and in some other matters, SLPs were rejected in limine by the Supreme Court, there was no justification on the part of the State to challenge the subsequent judgments in which earlier judgment was followed.

20. Negating the contention and allowing the

appeals, the Apex Court observed;

" We are unable to appreciate the objection raised against the prosecution of this appeal by the appellant or other SLPs filed in similar matters. Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest.

In any event, in our considered view, the non-filing of appeals before this Court by the State in similar matters or rejection of SLPs by this Court in limine or otherwise in similar matters, by themselves cannot operate as a bar or a fetter for this Court in entertaining SLPs subsequently filed even if they are considered to relate to similar matters where it finds, as in this case, that the High Court was wholly wrong in granting relief of compensation to a writ petitioner by the judgment under appeal by not considering his entitlement for such relief under Article 226 of the Constitution on account of laches or undue delay on his part or where such

wrong judgment is followed for granting similar relief by rendering 191 judgments, which are the subject of SLPs in this Court and where there is every possibility of the High Court granting similar relief at the instance of persons who may go before it with similar complaints, which ultimately may result in the estimated loss of Rs.400 crores to the State, as stated on behalf of the State and cause grave injustice to the interest of the State. Hence, non-filing of appeals before this Court against certain judgments of the High Court or rejection of appeals filed before this Court against certain judgments of the High Court, cannot be held to come in the way of exercise of this Court's wide discretionary power, with which it is especially invested under Article 136 of the Constitution of entertaining an appeal or appeals against a similar judgment or judgments at the instance of an aggrieved party including the State when it is found necessary to remedy manifest injustice. Therefore, the fact that the State has failed to file appeals in similar matters or this Court has rejected SLPs in similar matters, cannot be held to be a total bar or a fetter for this court to entertain appeals under Article 136 of the Constitution against similar judgments of the High Court where need to entertain such appeals is found necessary to meet the ends of justice, in that, the amount of power invested in this Court under Article 136 allows its exercise, wherever and whenever, justice of the matter demands it for redressal of manifest injustice."

21. Digambar was subsequently followed and the principle was reiterated in Union of India and another vs. K.N.Sivadas and others, 1997 (7) SCC 30. In that case, orders passed by Central Administrative Tribunal (CAT) in two earlier matters, were not challenged before the Supreme Court. Subsequent order was, however, challenged. The question before the Supreme Court was whether the orders passed in earlier two matters which was not challenged would automatically apply to all the persons similarly situated. Relying on Digambar, the Supreme Court held that "non-filing of appeal before the Supreme Court in similar matters, by itself would not operate as a fetter for the Supreme Court in entertaining Special Leave Petitions subsequently filed even if they related to similar matters, if the court finds that relief which was granted in earlier matters was wrong. The order passed by CAT was, therefore, held to be

"wholly unwarranted" and was set aside.

22. In the instant cases, in our considered opinion, therefore, preliminary contention raised by the respondents must be negatived. Firstly, even in earlier petitions in which the order was passed, the validity thereof is challenged by filing Letters Patent Appeals. We have condoned delay in filing appeals and they are also heard alongwith other Letters Patent Appeals. But even otherwise as per well settled principle of law, even if the authority has acquiesced the said judgment, that by itself is no ground for this court to dismiss appeals filed in other cases. We, therefore, overrule the preliminary objection.

23. It was contended by Mr. Shelat that an illegality has been committed by the Industrial Tribunal in entertaining applications under Sec.33-C(2) of the Industrial Disputes Act, 1947. According to him, such applications were not maintainable as condition precedent for making an application under that section was not complied with. He urged that Section 33-C provides for recovery of money "due" from an employee. A pre-requisite, therefore, for such an application is an order, award or adjudication by a Competent Authority. Unless there is an adjudication in favour of a workman and unless and until the heads are crystalised in the form of order/award, no application under Sec.33-C(2) would lie. In other words, according to the counsel, the provisions of Sec.33-C(2) are more or less in the nature of execution proceedings. In the present cases, there was neither award nor order nor judgment in favour of workmen and hence, the applications under Sec.33C(2) could not have been entertained. It was the case of the workmen that they were entitled to certain benefits on the basis of a Circular dt. October 17, 1988 which was contested by the authority. The question, therefore, was required to be adjudicated and decided by a Competent Court and/or Tribunal and only after it has been culminated into an award, or order, application for execution under sub-section (2) of Section 33-C would be competent.

24. In this connection, reliance was placed on a decision of the Hon'ble Supreme Court in M/s Punjab Beverages Pvt. Ltd. Chandigarh v. Suresh Chand and another, AIR 1978 SC 995 and a Full Bench decision of this court in Nizamuddin Suleman v. New Shorrock Spg. & MFG. Mills Co. Ltd. Nadiad and another, (1979) 20 GLR 290.

25. In our opinion, the contention is well founded. There is a controversy as to whether the Circular dt. October 17, 1988 would or would not apply to the workmen who were serving in Forest Department. The said question, therefore, required to be decided in appropriate proceedings by a Competent Court/Tribunal and only thereafter an application under Sec.33-C(2) of the Act would be competent.

26. Mr.Shelat also submitted that the learned Single Judge has committed an error in entertaining writ petitions under Art.226 of the Constitution and by granting relief to the petitioners who have directly approached this court. Since the case of the State was that the provisions of the Circular were not applicable to the employees of Forest Department, the learned Single Judge ought not to have entered into question of fact and granted relief in favour of the petitioners.

27. It was also contended that reading various clauses of circular dt. 17th October 1998, issued by R & B Department, it is clear that they were not applicable to employees of Forest Department.

28. In this connection, our attention was invited to the Gujarat Government Rules of Business, 1984 framed under Art.166 of the Constitution of India.

29. Rule 4 provides for transaction of the business of the Government. It reads as under:

4. The business of the Government shall be transacted in the departments specified in the First Schedule, and shall be classified and distributed amongst those departments as laid down therein :

" Provided that all cases relating to appointment, postings, transfers, promotions and conduct of All India Services Officers and other class-I Officers shall be referred to the General Administration Department for its concurrence."

Provided further that appointment of an officer not borne on the Secretariat Cadre to any Class-I post in any department of Sachivalaya shall be made with the prior concurrence of the General Administration Department."

30. Part II of the First Schedule enumerates subjects allotted to various departments of the Government.

Entry 46 of Item No.1 deals with subjects allotted to GAD. It reads;

"46(i) All matters pertaining to promotions, conduct and pension of all officers belonging to the junior time scale of the Indian Administrative Service.

(ii) All matters pertaining to appointments, postings, transfers, promotions, conduct, grant of leave, pension etc. in respect of Gazetted Officers and non-gazetted Government Servants under the administrative control of the Departments.

Item No.14 covers subjects allotted to Roads & Building Department. Entry 17, which is material, reads thus;

"17.(i) All matters pertaining to appointments, postings, transfers, promotions, conduct, grant of leave, pension etc. in respect of all Gazetted Officers (others than those covered under entry No.45 in the subject allotted to the GAD) and non-Gazetted Government Servants under the administrative control of the department.

(ii) all matters pertaining to grant of pension in respect of Class-I and II Officers of the Secretariat cadre under the administrative control of the department; and

(iii) all matters pertaining to grant of leave and to impose penalties as specified at serial number 1 and 2 of Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, and to institute disciplinary proceedings for imposing penalties as specified at serial numbers 3 to 8 of the said rule 6 in respect of Class-II Officers of the Secretariat cadre under the administrative control of the Department (See also entry No.45 under G.A.D.);"

Item No.20 speaks of subjects allotted to Forests and Environment Department. Entry No.14 reads as under:

"14.(i) All matters pertaining to appointment, postings, transfers, promotions, conduct, grant of leave pension etc. in respect of Officers of the Indian Forests Service;

- (ii) all matters pertaining to appointments, postings, transfers promotions, conduct grant of leave, pension etc. in respect of all Gazetted Officers (Other than those covered under entry No.45 in the subjects allotted to the GAD) and Non-Gazetted Government Servants under the administrative control of the department;
- (iii) all matters pertaining to grant of pension in respect of class I and II Officers of the Secretariat cadre under the administrative control of the Department and
- (iv) all matters pertaining to grant of leave and to impose penalties as specified at serial numbers 1 and 2 of Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 and to institute disciplinary proceeding for imposing penalties as specified at serial numbers 3 to 8 of the said rule 6 in respect of class II Officers of the Secretariat Cadre under the administrative control of the Department."

Our attention was also invited to Entry No.18 of the subjects allotted to Finance Department.(Item No.2). That item is as under:

"18. Pay, allowances, pension, other financial conditions of service and cadre strengths, subject to entries Nos.38 and 39 in the list of General Administration Department."

Entries 38 and 39 of GAD read thus;

"38. All matters affecting the All India Services and Posts.

39. Safeguarding of the rights and legitimate interest of all establishments."

31. On the basis of the Business Rules, it was argued by the appellants that the service conditions of employees can be decided only by the GAD (General Administration Department) in concurrence with the Finance Department. The Circular dt. 17th October, 1988 is not issued by GAD. It is issued by the Roads & Buildings Department. The said circular, therefore, must apply only to that Department and cannot embrace the employees of the Forest Department.

32. Moreover, reading of circular also makes it abundantly clear that its application is limited to the employees who are working for maintenance and repairation of construction work. It has nothing to do with the employees working in other Departments including Forest Department if they are not concerned with the Maintenance and Reparation of construction work. In the instant cases, the employees are not working in Maintenance or Reparation of construction work and hence the provisions of the said circular cannot apply to them.

33. It is further submitted that on 30th March, 1995, the Finance Department issued a circular, wherein it was, inter alia, stated that the Government vide R & B Department's Circular dt. 17th October 1988 had issued certain guidelines for regularisation of daily wagers by making them regular employees of the Government subject to fulfilment of certain conditions laid down therein. The said orders are made applicable only to those daily wagers who were working in R & B Department. It was further stated that the question whether benefit of the said scheme could be made applicable to daily wagers/temporary workers of other Department was under consideration of the Government. In the meantime, the Supreme Court decided a case in Delhi Development Horticulture Employees Union v. Delhi Administration, Delhi and others. As per the said decision, no such benefit could be granted to employees of other departments.

34. In paras 3 and 4, therefore, it was decided as under:

"3. The Government has therefore decided that the benefits given in Govt. R & B Resolution No.WOE 1588(5)(3)/02 dt. 17.10.88 and other orders issued in this behalf from time to time, cannot be given to the daily wagers of other departments except the departments covered under the said Resolution and it has also been decided that all the Administrative Departments should review their schemes related to daily wagers-temporary workers in the light of the observation made in the said judgment of Supreme Court and take appropriate stand before the courts where litigation relating the regularisation of such workers are pending.

4. All the Administrative Departments are further directed to take review regarding

implementation of the instructions of this circular and intimate to the action taken by the authorities to FD within a month i.e. to say require information in the prescribed proforma, attached herewith, should be intimated before 30th April 1995 to this Department without fail."

35. It is, no doubt, contended by the respondents that no such arguments were advanced before the learned Single Judge and the State cannot be permitted to raise such argument at the appellate stage.

36. In this connection, however, it may not be out of place to note that in Special Civil Application No.54 of 1997 (LPA No.408/97) an affidavit-in-reply was filed by one J.S.Chaudhari, Deputy Conservator of Forest, Mehsana, wherein all the contentions were raised. It was urged that the provisions of Government Circular dt. 17.10.1988 were specific in granting benefits to daily wagers working for the maintenance and reparation of construction work under the Roads and Buildings Department; that in the light of the decision in Delhi Administration, benefits could not be extended to the employees in other department and after considering all the aspects and decision of the Apex Court, a circular was issued on March 30, 1995, copy of which was annexed to the affidavit-in-reply. It was also asserted that the project for which the employees were engaged was contingent and the same was sanctioned only for a fixed duration and hence the petitioners were not entitled to regularisation. According to the deponent, forestry wing of Forest Department of the Government of Gujarat was working with the external assistance since 1980 on project basis between 1980-84 and social forestry was framed by World Bank in their CFP Project, Phase 1.

37. It was further the case of the authorities that for appointment in class IV cadre, statutory rules were framed under the Proviso to Art.309 of the Constitution and unless regular process of recruitment was followed, no appointment could be made. The petitioners were not appointed in accordance with the said statutory rules and they could not be made regular.

38. The learned Single Judge, however, allowed the petition by making rule absolute upholding the contention of the petitioners that the point was "fully" covered by a decision in Spl.C.A.No.4565 of 1995 and companion matters. It is, therefore, clear that the matter was decided following the previous order passed in Spl.C.A.No.4565 of 1995 and companion matters, which is

also challenged by filing Letters Patent Appeals.

39. Alternatively, it was contended on behalf of the employees that if the stand of the said authority is that the employees working in one department are entitled to certain benefits but the employees working in other Departments, though similarly situated would be deprived those benefits, such an action would be clearly arbitrary, discriminatory, unreasonable and violative of Art.14,16,19 and 21 of the Constitution of India. The counsel, therefore, submitted that even if the provisions of circular dt. 17th October, 1988 explicitly do not apply to the employees of the Forest Department, they must be held entitled on the basis of equality clause enshrined under Arts.14 and 16 of the Constitution, otherwise such an action is liable to be quashed and set aside being violative of right of equality.

40. At this stage, it was contended by Mr.Shelat for the appellants that no such point was argued before the learned Single Judge nor the learned Single Judge extended the benefits under circular dt. October 17, 1988 on the ground that non-extension of such benefits would be violative of equality clause under Arts.14 and 16 of the Constitution.

41. It cannot be ignored that there was no necessity on the part of the petitioners to impugn resolution dt. October 17,1988 on the ground of violation of Art.14 and/or 16 of the Constitution inasmuch as the learned Single Judge was of the view that the provisions of the said circular were applicable to employees of the Forest Department as well.

42. It is, therefore, in the interest of justice if the matters are remanded to the learned Single Judge who will decide all the questions in accordance with law on their own merits.

43. It was submitted on behalf of the employees that they are in service since several years and they were ordered to be regularised by the learned Single Judge. If the appeals are allowed and the orders passed by the learned Single Judge are set aside, the State authorities by treating the petitioners as daily wagers, terminate their services, it would cause immense hardship and serious prejudice would be caused to them and they would be deprived of their livelihood. We see considerable force in the said submission of the learned counsel. We also cannot be oblivious of the fact that several matters were pending before the learned Single Judge in remote

past. In almost all matters, interim relief was granted protecting the service condition of the employees during the pendency of the petitions. In some other matters, applications were filed under Sec.33-C(2) of the Industrial Disputes Act before the Industrial Tribunal which were allowed.

44. We are setting aside the orders passed by the learned Single Judge and remanding the matters to the learned Single Judge for fresh disposal in accordance with law. If during the pendency of petitions before the learned Single Judge, interim relief will not be granted, irreparable loss and great prejudice will be caused to the employees and their services are likely to be terminated. It is, therefore, clarified that during the pendency and final disposal of petitions by the learned Single Judge, no action will be taken by the authorities which would prejudicially affect the workmen.

45. In the result, Letters Patent Appeals are allowed, the orders passed by the learned Single Judge are set aside and the matters are remanded to the learned Single Judge for deciding in accordance with law on their own merits without being influenced in any manner by observations made in the orders passed by the learned Single Judge as well as by the observations made by us hereinabove. It is, however, directed that during the pendency and final disposal of all the petitions, the authorities will neither terminate the services of the workmen nor change service conditions to their detriment. It is also clarified that it is open to the parties to take all contentions available to them at the hearing of petitions. The parties are at liberty to request the learned Single Judge to take up the matters for early hearing. In the facts and circumstances of the case, there shall be no order as to costs.

Date : 28-12-1998

After pronouncement of the judgment, Mr.Pathak, learned counsel for the petitioners prays that operation of this order may be stayed and the judgment may please be kept in abeyance for some time so as to enable the petitioners to approach the higher forum.

In the last para of the order we have already stated that "during the pendency and final disposal of all the petitions, the authorities will neither terminate

the services of the workmen nor change service conditions to their detriment". In view of the said direction, in our opinion, the prayer cannot be granted. Hence, prayer is rejected.

(C.K.Thakkar,J.)

Date : 28-12-1998 (A.L.Dave, J.)

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